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given. It is but a pretext for the exercise of legislative power resorted to by a judicial officer, and is but a shadowy effort to blend those powers, by one of the co-ordinate departments of government, which the Constitution says shall not be united. It was necessity that prompted Pontius Pilate to appease the cry of the howling Jewish mob to murder the innocent Christ and send him to his death upon the cross, and it was necessity that made the same Pilate play the craven before the Roman senate when called to account for his cowardly conduct. It was necessity that caused Jeffreys, puppet of an infamous king, to disgrace the laws of his country and blacken English jurisprudence by the horrible butcheries perpetrated at the behest of a royal master. It may be well to remember that the only monument erected to his memory is the infamy of his judicial career. I as necessity that murdered the great Raleigh by the reproduction of the testimony of living witnesses. The courts of England, whose judges, with one or two exceptions, have rarely bowed to despotism and loaned themselves as tools to accomplish a political end, would not tolerate such testimony. And 'necessity' therefore, without sanction of law, organized its commission and destroyed Sir Walter Raleigh. It was 'necessity' that broke the neck of Sir John Fenwick. He could not be convicted before the courts of England because testimony could not be reproduced, and Parliament, to please the Crown, by a bill of attainder, which enabled it to violate every rule of evidence, convicted him," etc. Nevertheless the Court of Criminal Appeals of Texas holds that such testimony may be reproduced on a new trial, and affirms a conviction of murder.\*

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**"Fire-Water" in a Dry Town.**—One morning at the break of dawn, in the little dry town of McComb, Miss., one Hill was proceeding down the public street, peaceably and quietly carrying a suitcase. In the other direction we see the marshall, the emblem of the law, the strong arm of protection. The two are approaching. Hill is unconscious of the other's presence, but the marshal, intent upon his duty, glances at the suitcase, and there steals into his eye a gleam of suspicion, and his heart is filled with mistrust, that "green-eyed monster which doth mock the very meat it feeds upon." Now Hill becomes aware of the proximity of this officer of the law, and attempts to change his course of locomotion, but alas too late. The marshal stops him, opens the suitcase, and beholds in it fifty-seven half pints of whiskey, each having a convenient little corkscrew attached, so as to make it thoroughly convenient for the thirsty lover of the drink "that maketh glad the heart" to reach the contents without delay. At the sight of this generous quantity of the good

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\*What is here said is timely in view of the recent utterances of the great opportunist, now a candidate for the Presidential nomination.

old "tanglefoot" this marshal in his excitement forgets about Hill, and "arrests" the suitcase. About four hours later he starts out in search of Hill, finds him, places him under arrest on a charge of having in possession intoxicating liquors with intent to sell or unlawfully give away. Hill was convicted, and now appeals. The Supreme Court of Mississippi in *McComb City v. Hill*, 56 Southern Reporter, 346, holds that under the evidence a conviction was improper. The views of the court are of interest: "The fact that the corkscrew convenience was attached to each bottle is not evidence of possession for unlawful purposes by Hill. It is a matter of common knowledge that nothing is more provoking and distressing than to have to wait for a corkscrew when a burning and consuming thirst is raging within." But because Hill looked frightened when he met the marshal, it is urged that this evidenced his guilty intent. Answering this, the court says: "When a man has whiskey in his possession in a dry town, and is out on the streets with it so early in the morning, it is natural for him to be a little suspicious, for he does not know whom to trust, nor from what source might come the enemy, bent on the destruction of his goods. The frightened look, under the circumstances, is no proof of guilty possession."

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**Eminent Domain (§§ 79, 80)—Right to Compensation—Waiver.—**

As the constitutional provision, inhibiting the taking of private property for public use without compensation, is a mere limitation upon the power of eminent domain, constituting no abridgement of the power of a citizen to dispose of his property or rights or interests therein by contract, the protection it affords from unlawful entries upon private lands by internal improvement companies may be waived by agreement or conduct creating an estoppel. And if an owner of land permits a railroad company to build a railroad through his land, under an oral agreement for compensation, or, without protest and with full knowledge of the fact, permits a railroad to be built on his land, he is limited to his remedy for compensation for the land, and cannot prevent the operation of the road by injunction, nor compel removal thereof from the land. (Ed. Note.—For other cases, see *Eminent Domain*, Cent. Dig. § 774; Dec. Dig. § 276.) *Briar Creek Ry. Co. v. Kanawha Cent. Ry. Co. et al.* (Supreme Court of Appeals of West Virginia. Jan. 23, 1912), 73 S. E. 726.